IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 4664/1998

RAJENDRA SINGH Vs. UNION OF INDIA & ORS.

Date: 06.11.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. Devendra Raghava for the petitioner.
Mr. Vinayak Joshi for
Mr. Bhanwar Bagri for the respondents.

****

Brief facts of the case are that the petitioner was serving as Hawaldar at Shillong and at the relevant point of time was posted at Shillong. Since February 1997 to 25th March, 1997 he was at D.S.C. Centre, Kannanoor (Kerla) for the course of Hawaldar and after completing the said course, he reported the Unit on 30.03.97. On 04.04.97 he was directed to report at 41 Wing AF Jaisalmer and on 07.04.97 he reported at Jaisalmer.

It is alleged by the petitioner that he was illegally detained and kept in illegal custody where he was tortured and given beating. During custody, the respondents have obtained his signatures on blank papers. On account of illegal detention, his wife filed

a D.B. Habeas Corpus Petition No. 1886/98 before this Court and this Court was pleased to issue notice. A telegram was received by the wife of the petitioner, by which it was communicated that the services of the petitioner have been dismissed on 11.07.98.

Learned counsel for the petitioner submits that the services of the petitioner are governed under the Army Act, 1959 and mandatory provisions prior to dismissal from service are required to be complied with. Further Section 20 deals with dismissal, removal or reduction in rank by the Chief of the Army Staff and by other officers and that too after following due process of law. It is also alleged that neither show cause notice was served upon the petitioner nor court of enquiry was conducted. So far as the show cause notice under Rule 17 of the Army Rules, the respondents are required to provide opportunity to defend his case, which has been admittedly not provided. In support of his submissions, the learned counsel for the petitioner has placed reliance on the judgment rendered by the Karnataka High Court in the case of ***S.K. Katoch Vs. Ministry of Defence, New Delhi and others, reported in 2002 LAB I.C. 1930.***

Per contra, learned counsel for the respondent Union of India has categorically stated that they have issued show cause notice dated 09.07.98 but the petitioner refused to accept the same. It is also denied that during custody, signatures on blank papers were obtained by the respondents and the petitioner was rightly dismissed from service under the provisions of Army Act 20(3) vide dismissal order dated 11.07.98. Learned counsel for the respondents in support of his submissions has placed reliance on the judgment rendered by this Court in the case of ***Ex. L/NK Rameshwar Lal Vs. The Union of India & Ors, decided on 17.04.2002 and reported in 2002(3) WLC(Raj.) 537,*** wherein it was held that discharge on ground of petitioner being a security suspect, no case of violation of statutory provisions, Section 20 or Rule 17 of Army Rules, 1954 not attracted. Thus, in view of the ratio decided by this Court in the aforementioned case, no case of interference is made out.

I have considered the rival submissions of the respective parties and have also gone through the judgments referred by the learned counsels in support of their submissions.

It is not disputed that the conduct of the petitioner was suspected and as alleged by the

petitioner that he was in custody for a period of about one year and the wife of the petitioner filed a D.B. Habeas Corpus petition before this Court as mentioned herein above, wherein notices were issued by this Court. It appears that after knowing the fact that the petitioner's wife filed a habeas corpus petition, the proceedings were initiated for dismissal of the petitioner from service.

It is also not disputed that vide telegram Annexure-1, the wife of the petitioner was informed that the petitioner has been dismissed from service. After release of the petitioner from custody, the habeas corpus petition filed before this Court was dismisses as having become infructuous on 17.07.98. It appears that show cause notice was issued on 09.07.98 and the petitioner has allegedly refused to accept the same, though the petitioner was in custody of the respondents and the dismissal order has been passed on 11.07.98.

I have gone through the judgment rendered by the Karnataka High Court in the case of ***S.K. Katoch (supra),*** referred by the learned counsel for the petitioner, wherein the employee in department of defence- Offence alleged to be committed under Section 64(e)- No sufficient evidence on record to frame any

charges- Dismissal of petitioner from service invoking power under Section 20 r/w Rule 17 instead of seeking reference for court-martial- Not proper and liable to be set aside.

On the contrary, learned counsel for the respondents has placed reliance on the judgment rendered by this Court in the case of ***Ex. L/NK Rameshwar Lal Vs. The Union of India & Ors (supra).*** In the aforementioned case, the respondents have complied with the provisions of Rule 17 by giving a show cause notice.

Here in the instant case, in the show cause notice which was issued on 09.07.98, no reference for court-martial has been made and on 11.07.98, order of dismissal from service has been passed. It appears that upon filing of the habeas corpus by the wife of the petitioner, dismissal order has been passed in haste without complying with the mandatory provisions of law.

Thus, in view of the settled preposition of law, the dismissal order dated 11.07.98 is per se illegal and has been passed without any basis and that too by way of issuing telegram to the wife of the petitioner, which deserves to be quashed and set-aside and the same is hereby quashed and set-aside.

Consequently, the writ petition stands allowed. However, the respondents are at liberty to do needful after following the due process of law and after providing opportunity of being heard to the petitioner.

(K.S. RATHORE),J.

/KKC/